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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1946

□

STELLA FOX

Petitioner

v.

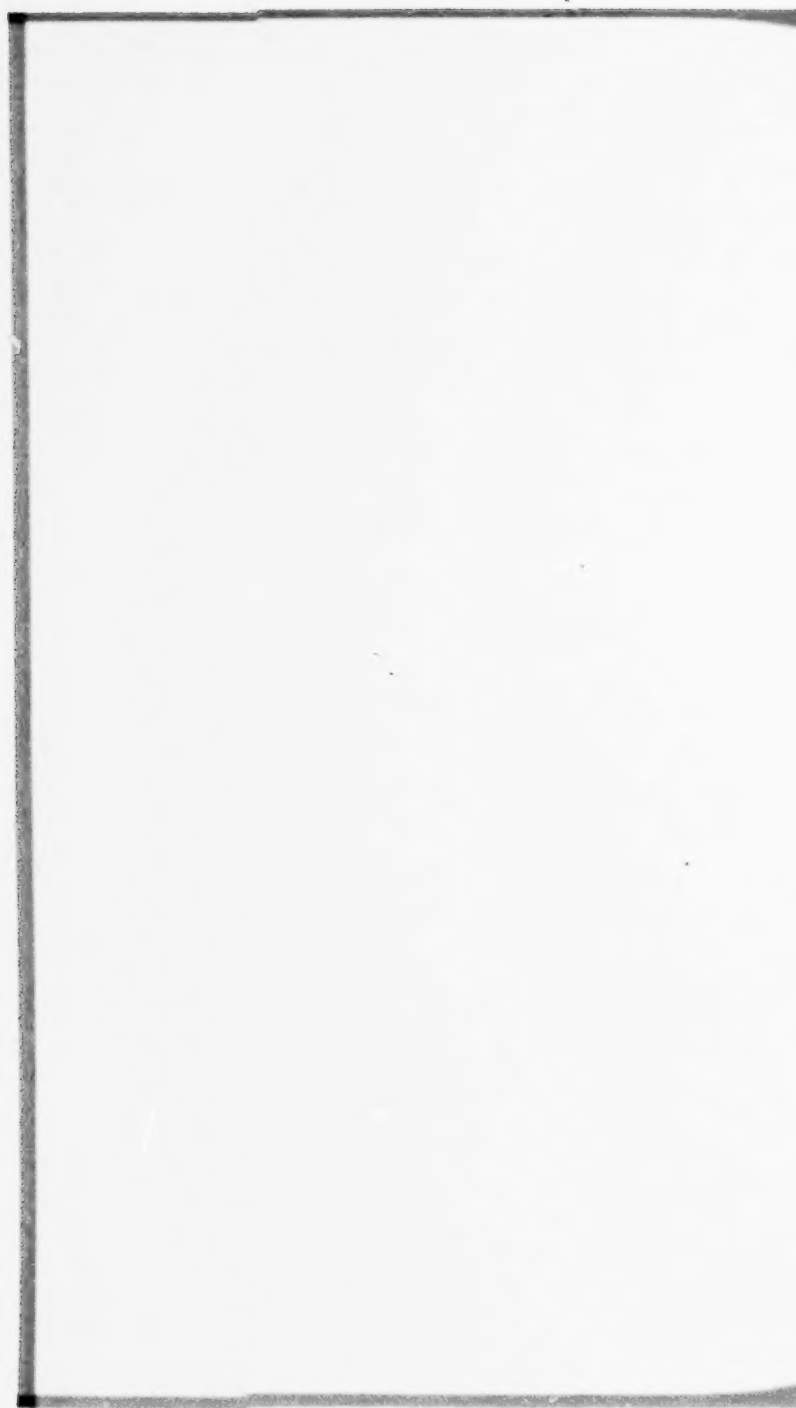
THE PEOPLE OF THE STATE OF MICHIGAN

Respondent

□

**Petition for Writ of Certiorari
to the Supreme Court of Michigan**

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THE PEOPLE OF THE STATE OF MICHIGAN

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**Petition for Writ of Certiorari
to the Supreme Court of Michigan**

TO THE SUPREME COURT OF THE UNITED STATES:

The petitioner, Stella Fox, presents this her petition for writ of certiorari and shows unto the Court as follows:

Summary of Matters Involved

1. *Preliminary Statement.*

The facts and problems here presented to this Court are similar to those involved in *Prince v. Commonwealth of Massachusetts*, 321 U. S. 158. For reasons hereinafter discussed the petitioner requests this Court to reconsider its decision in the *Prince* case.

2. *Opinion of the Court Below.*

The opinion of the Supreme Court of Michigan is not yet reported. It appears in the record at pages 155-162.

3. *Statutory Provisions Sustaining Jurisdiction.*

The jurisdiction of this Court rests on Section 237 (b) of the Judicial Code, 28 U. S. C. 344 (b).

4. *Timeliness of the Petition.*

The judgment of the Supreme Court of Michigan was entered on April 8, 1947. [163]¹ The petition for writ of certiorari is filed within three months from the date of the entry of such judgment in said court.

5. *Ordinance Involved.*

This case is one in which the constitutionality of state legislation is drawn in question, to wit, Chapter 195, Section 4 of Compiled Ordinances, 1936, Ordinance 344-C of the City of Detroit, Michigan, reading as follows:

"AN ORDINANCE regulating persons engaged in so-called 'Street Trades,' prohibiting minors of certain ages from engaging in such trades and providing a penalty for the violation thereof.

"IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CITY OF DETROIT:

"Section 1. Definition. For the purpose of this ordinance the words 'street trade' shall mean the business, occupation, undertaking or pursuit of:

- (a) Peddling
- (b) Boot blacking
- (c) Delivering goods, wares, merchandise, telegrams, newspapers, magazines, periodicals, advertising matter, or any other printed or written material

¹ Numbers hereinafter appearing in brackets refer to pages in the printed record in this case.

- (d) Distributing, selling or offering for sale, goods, wares, merchandise, newspapers, magazines, periodicals, advertising matter or any other printed or written material
- (e) Soliciting subscriptions for newspapers, magazines or periodicals
- (f) Offering services for hire or gain and/or
- (g) Soliciting funds for the awarding of prizes by punchboards or otherwise

when conducted in any street, alley, park, square or other public place, or in the lobby or entrance of any building frequented by the public or conducted by house to house canvassing.

"Sec. 2. No male under twelve years of age and no female under eighteen years of age shall engage in any street trade, Provided, however, any male over the age of ten and under the age of twelve years actively engaged in delivering and/or selling magazines or periodicals on an established residential neighborhood route, at the date of the adoption hereof, may continue to do so subject to the provisions of this ordinance. It shall be unlawful to engage or permit the employment of any boys under the age of twelve years not now actively engaged in such delivery and/or selling, it being the intent of this provision to permit only such boys under twelve years, and over the age of ten years, now actively engaged in delivering and/or selling magazines or periodicals on an established residential neighborhood route to continue such delivery and/or selling.

"Sec. 3. No male under seventeen years of age shall engage in any street trade during school hours, unless legally excused from school, as now or hereafter provided by law. No male under the age of seventeen shall engage in any street trade between the hours of 8 o'clock p.m. and 5

o'clock a.m. Provided, that any male over the age of fourteen may sell and/or deliver periodicals, newspapers or magazines until 10 o'clock p.m. No male under the age of seventeen years shall engage in any street trade for a combined school and work period of more than eight hours in any one day.

"Sec. 4. It shall be unlawful for any person, firm, association, partnership, corporation or organization to hire or employ, or permit to be hired or employed, or suffer to work in any street trade any minor contrary to the terms of this ordinance. No person, firm, association, partnership, corporation or organization shall give, sell, deliver or consign any goods, wares, or merchandise, including newspapers, magazines, periodicals, advertising matter or any printed or written material to any minor for the purpose of selling, distributing or delivering the same in any street trade in violation of the terms of this ordinance. It shall be unlawful for any parent, guardian or custodian to suffer, permit, allow or induce any minor to engage in any street trade contrary to the provisions of this ordinance.

"Sec. 5. Penalty. Any person of the age of seventeen years or more who violates any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not more than One Hundred (\$100) Dollars, or by imprisonment for not more than ninety (90) days, or by both such fine and imprisonment in the discretion of the court. Any child under the age of seventeen who violates any of the provisions of this ordinance shall be deemed a delinquent child and shall be dealt with as a juvenile delinquent.

Sec. 6. This ordinance is hereby declared to be immediately necessary for the preservation of the public peace,

health and safety and is hereby given immediate effect.

"Approved: December 17, 1935.

FRANK COUZENS, Mayor

"Attest: RICHARD W. READING, City Clerk.

"The above ordinance will take effect on the 18th day of December, 1935.

RICHARD W. READING, City Clerk"

6. *Constitutional Provisions Involved.*

The First and Fourteenth Amendments to the United States Constitution protecting the right of freedom of worship are relied upon.

7. *Questions Presented.*

(1) Does the conviction deprive petitioner of liberty and property without due process of law, contrary to the Fourteenth Amendment to the United States Constitution, in that the judgment of conviction was entered without a finding that respondent

(a) clearly established by evidence the "existence of facts supporting the legislative judgment" so as to overcome the presumption of unconstitutionality which attaches to this ordinance by reason of its operating as a *prima facie* denial and infringement of the constitutional right of freedom of worship, and

(b) justified the operation of the ordinance by evidence clearly establishing that it was a reasonable means to the end sought to be accomplished and that it was not arbitrary, unreasonable or oppressive?

(2) Is the ordinance unconstitutional as construed and applied because it abridges and denies petitioner's right to

educate, teach and direct the spiritual welfare of her child, to maintain a family and to discharge her moral obligations as mother while the child is denied the right to the benefits of such relationship, all contrary to the First and Fourteenth Amendments to the United States Constitution?

(3) Is the ordinance unconstitutional as construed and applied because it abridges and denies petitioner's and her child's freedom to worship Almighty God according to the commands of Jehovah and their freedom of conscience, contrary to the First and Fourteenth Amendments to the United States Constitution?

(4) Is the ordinance unconstitutional as construed and applied because it abridges and denies petitioner's and her child's privileges, rights and immunities secured by the Constitution in violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution?

(5) Do the judgments of the courts below deprive petitioner of her liberty and property without due process of law, contrary to the due process clause of the Fourteenth Amendment to the United States Constitution, in that there is an absence of evidence in the record to establish that she violated the ordinance in question.

8. How Issues Raised.

At the close of all the evidence, petitioner filed a motion to dismiss the complaint. [88-89] The second ground of the motion to dismiss was that the ordinance, when properly construed, did not apply to the activity of petitioner and her child because they were engaged in preaching the gospel and worshiping Almighty God according to the dictates of their consciences, which cannot properly be described as a "street trade" within the meaning of the ordinance. [89] The fourth and fifth grounds of said motion urged that the

ordinance, as construed and applied, abridged the rights of petitioner and her child of freedom to worship Almighty God, their freedom of conscience, and freedom of speech and of press, contrary to the First and Fourteenth Amendments to the United States Constitution and the Michigan Constitution. [98] All of these grounds were overruled by the judge of the Recorder's Court. [77, 87] The Recorder held that the ordinance applied and that it was not unconstitutional, and convicted petitioner. [77] The rulings of the Recorder in this case, convicting petitioner and overruling each of the motions to dismiss, were complained of in the affidavit for the writ of certiorari from the Circuit Court to the Recorder's Court. [71-77] The Circuit Court held the conviction in this case was proper, that the ordinance was applicable and that there was no violation of the rights of petitioner and her child. [90-96]

Upon appeal to the Supreme Court of Michigan the federal questions were presented by application for leave to appeal to the Supreme Court. [71-77] In briefs and upon the oral argument the federal questions were urged to the Court. These federal questions were considered and decided adversely by the Supreme Court to petitioner. [155-162]

9. *Nature and History of Action*

This proceeding against Stella Fox was instituted in the Recorder's Court of Detroit by a complaint signed and filed by Susan Glinski, member of the Women's Division of the Detroit Police Department. [76, 79] In such complaint it was charged that petitioner violated Section 4 of Chapter 195 of the Compiled Ordinances of the City of Detroit of 1936, commonly known as the "Street Trades" ordinance, and otherwise entitled Ordinance No. 344-C. [79-82]

The complaint alleged that petitioner Stella Fox was the parent of "Dorothy Fox . . . a female of the age of 13 years" and "did permit said minor to engage in street trade,

in that on the street at Gratiot Avenue and Randolph Street, in the said City of Detroit, Michigan, she, the said minor, did offer for sale a certain magazine, periodical or other printed material from the Watch Tower Bible and Tract Society." [79]

Petitioner was arrested on August 21, 1943, under such complaint. [79, 84, 86] The case came on for hearing in the Recorder's Court for the City of Detroit on November 30, 1943. [77, 83] At the close of the People's case, petitioner filed a motion to dismiss [77, 86, 88], which was denied. [77, 86] Petitioner and her daughter, Dorothy, testified in her defense. At the close of all the evidence, petitioner filed another motion to dismiss. [77, 87, 88-89], which was denied. [77, 87] Petitioner was adjudged guilty, convicted and sentenced to pay a \$35 fine or serve ten days in jail. [77, 87] She indicated her intention to apply to the Circuit Court for certiorari and was released on bail. [77] Thereafter she duly served her notice of intention to remove the case by certiorari to the Circuit Court. [68]

In the time and manner required by law, petitioner made her affidavit for writ of certiorari wherein she presented to the Circuit Court for Wayne County the same questions presented to this Court. [68-73] An order was granted directing the issuance of the writ of certiorari. [74] The writ of certiorari was duly issued and served upon the Recorder. [75] In the time and manner required by law, the Recorder filed with the Circuit Court his return to the writ of certiorari. [76-89] In due course, the case came on for hearing before the Circuit Court. [90] An opinion was written, in which the reasons were stated for affirming the finding of the Recorder's Court. [90-96] A judgment of affirmance was duly entered. [97] Petitioner duly filed her motion for rehearing. [98-99] The motion was overruled. [100]

Thereafter petitioner, in the time and manner prescribed by law, filed and served her notice of claim of appeal to

the Supreme Court of Michigan, accompanied by application for leave to appeal, which was granted by the Supreme Court of Michigan. The reasons and grounds for appeal were duly filed. [101-102] Upon appeal the judgment was affirmed for reasons stated in an opinion filed by the Supreme Court of Michigan. [155-162]

FACTS

Stella Fox is one of Jehovah's witnesses, having been ordained as a minister of the Watch Tower Bible and Tract Society in 1936. [87] In connection with a convention and assembly which she attended in Detroit,² she and her daughter, Dorothy, were standing together on the curb of the sidewalk near the corner of Gratiot Avenue and Randolph Street in Detroit on August 21, 1943. [83] She and her daughter were wearing sandwich signs advertising the public meeting and holding up the *Watchtower* magazine, exhibiting such to the people. [83, 84] They offered these magazines to the pedestrians as they passed by along the sidewalk. [83, 84] Dorothy did not sell or offer to sell any magazines, however. [84, 85] Dorothy was walking back and forth among the pedestrians offering the literature to them but had on no magazine bag. [85]³ Dorothy was en-

² This is the same convention and assembly as is described in the record in the *Ciocartan* case. Also the same talk, "Freedom in the New World," was advertised and the same means of advertising the meeting was used.

³ There is a sharp dispute in the testimony as to what the child Dorothy was doing. Mrs. Glinski, the policewoman, said that Dorothy was "holding up the *Watchtower* magazine", and that she got the magazine from Dorothy. [83, 84, 85] Dorothy denied that she had any magazines in her possession, or that the policewoman received a magazine from her. [85] She said that all she was doing was advertising the free Bible lecture. [85, 86] She insisted that the first time she saw the magazine, supposedly received from her, was when she saw it in court, and that she had sold nothing on the street. [86] Petitioner said that, while she had magazines with her and offered them to the people, her daughter did not have or offer any magazines to the people, but limited her work to passing out the invitations to the free Bible lecture. [57]

However, since this case was before the Circuit Court below on certiorari, construction of all the evidence most favorable to the People was necessary. Accordingly the facts above stated, based upon the officer's testimony, are assumed to be true.

gaged in this work of her own free will because it was her desire to do so. Petitioner did not direct or force her to engage in this work. [86, 87]

Dorothy was twelve years of age [83, 85] and attended Grant School in Stockton. [86] Her mother did not pay her any money to go out and do the work. [86] Dorothy did not sell any literature. [86, 87]

At about 11:50 o'clock on the morning in question, while petitioner and Dorothy were engaged in this preaching activity, they were approached by Mrs. Glinski. [83, 86] The policewoman asked petitioner if she knew she was violating the ordinance by permitting Dorothy to engage in this work. [84, 87] She informed Mrs. Glinski that it was Dorothy's sacred duty to serve Jehovah, which was in her best interests. [84] She further stated that the child was better off with her than at home alone. [84] Petitioner said that she permitted her daughter to be with her and designated the place for her to stand. [85, 87]

Reasons Relied on for Allowance of Writ

The decision of the court below and the majority opinion of this Court in *Prince v. Commonwealth of Massachusetts*, 321 U. S. 158, are out of harmony with and conflict with the decisions of this Court in *Pierce v. Society of Sisters*, 268 U. S. 510; *Meyer v. Nebraska*, 262 U. S. 390; *Murdock v. Pennsylvania*, 319 U. S. 105; *Follett v. McCormick*, 321 U. S. 573; and *West Virginia State Board of Education v. Barnette*, 319 U. S. 624. See the dissenting opinion of Jackson, Roberts and Frankfurter, Justices, in *Prince v. Com-*

monwealth of Massachusetts, 321 U. S. 158, 177, 178, dissenting. The decision of this Court in *Prince v. Commonwealth of Massachusetts* should be reconsidered upon this petition for certiorari because of the cogent reasons stated by Mr. Justice Murphy in his dissent in *Prince v. Commonwealth of Massachusetts*, 321 U. S. 158, 172-176.

The decision of the Supreme Court of Michigan is erroneous because based upon a decision of the Supreme Court of the United States which should be reconsidered and reversed and which the Court is hereby asked to reconsider, in the case of *Prince v. Commonwealth of Massachusetts*, 321 U. S. 158, because it is erroneous. *Smith v. Allwright*, 321 U. S. 649, 655; *Burnet v. Coronado Oil and Gas Co.*, 285 U. S. 393, 404-411; Reed, *Stare Decisis and Constitutional Law*, 33 PA. BAR ASS'N Q. (1938) 131, 133; Sachs, *Stare Decisis and the Legal Tender Cases* (1934) 20 VA. L. REV. 856, 859; *New Hampshire v. Richardson*, 92 N. H. 178, 27 A. 2d 94.

The ordinance is unconstitutional as construed and applied because it abridges and denies petitioner's and the child's freedom to worship ALMIGHTY GOD according to the commands of Jehovah and their freedom of conscience, contrary to the First and Fourteenth Amendments to the United States Constitution. Insofar as the decision in the *Prince* case approved the constitutionality of the construction placed upon a similar law it departs from and conflicts with the decisions cited above.

WHEREFORE petitioner prays that this Court issue a writ of certiorari to the Supreme Court of Michigan directing such court to certify to this Court for review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case as numbered and entitled on the docket of said court; and that the judgment of the said Supreme Court of Michigan, affirming the judgment of conviction, be here set aside and petitioner dismissed from custody; and that petitioner be granted such other and further relief in the premises as to this Court may seem just and proper in the circumstances.

STELLA FOX
Petitioner

By HAYDEN C. COVINGTON
Attorney for Petitioner

BRIEF

in Support of Petition for Writ of Certiorari

SPECIFICATION OF ERRORS

The petitioner assigns the following errors in the record and proceedings of said cause:

1. The conviction deprives petitioner of liberty and property without due process of law contrary to the Fourteenth Amendment to the United States Constitution in that the judgment of conviction was entered without a finding that respondent clearly established by evidence the "existence of facts supporting the legislative judgment" so as to overcome the presumption of unconstitutionality which attaches to the ordinance by reason of its operating as a prima facie denial and infringement of the constitutional right of freedom of worship.

2. The conviction deprives petitioner of liberty and property without due process of law contrary to the Fourteenth Amendment to the United States Constitution in that the judgment of conviction was entered without a finding that respondent justified the operation of the ordinance by evidence clearly establishing that it was a reasonable means to the end sought to be accomplished and was not arbitrary, unreasonable or oppressive.

3. The ordinance is unconstitutional as construed and applied because it abridges and denies petitioner's right to educate, teach and direct the spiritual welfare of her child, to maintain a family and to discharge her moral obligation as mother, while the child is denied the right to the benefits of such relationship, all contrary to the First and Fourteenth Amendments to the United States Constitution.

4. The ordinance is unconstitutional as construed and applied because it abridges and denies petitioner's and her child's freedom to worship Almighty God according to the commands of Jehovah and their freedom of conscience contrary to the First and Fourteenth Amendments to the United States Constitution.

5. The ordinance is unconstitutional as construed and applied because it abridges and denies petitioner's and her child's privileges, rights and immunities secured by the Constitution, in violation of the equal protection clause of the Fourteenth Amendment to the United State Constitution.

6. The conviction deprives petitioner of her liberty and property without due process of law, contrary to the due process clause of the Fourteenth Amendment to the United States Constitution in that there is an absence of evidence in the record to establish that she violated the ordinance in question.

Argument

[For the argument, the Court is referred to the Brief in Support of Petition for Writ of Certiorari in the companion case, *John George Ciocarlan v. The People of the State of Michigan*, at pages 16 to 39 thereof, which argument is here referred to and made a part hereof as though copied at length herein.]

Conclusion

WHEREFORE the Supreme Court of the United States should grant the petition for writ of certiorari because the court below disposed of important and substantial federal questions in a way that is in conflict with the Constitution of the United States and applicable decisions of the nation's highest court, and has so radically and far departed from the Constitution of the United States and the accepted sound course of judicial procedure as to call for exercise by the Supreme Court of the United States of its power of supervision and review to halt the same.

Respectfully submitted,

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